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## QUESTIONS PRESENTED

Appellant, constructing airfield facilities in Arkansas under a Government contract awarded pursuant to its bid, was convicted of violating an Arkansas statute which requires contractors to obtain a license from the Contractors Licensing Board of Arkansas before they may bid upon, contract for, or perform any construction project in Arkansas in the amount of $20,000 or more. The questions presented are:

1. Whether the doctrine of intergovernmental immunity forbids the application of the Arkansas licensing statute to contractors with the Federal Government because it results in substantial interference with the federal functions of selecting contractors and planning construction.

2. Whether the application of the Arkansas licensing requirement in this case is invalid because in conflict with the federal procurement legislation and regulations thereunder, prescribing the criteria for selecting federal contractors.

## STATUTES AND REGULATIONS INVOLVED

Act 124 of Arkansas Acts 1939, as amended, Arkansas Statutes 1947, Sections 71–701 to 71–721, is set forth in Appendix A, *infra*, pp. 34–45. The pertinent provisions of the Armed Forces Procurement Act of 1947, 62 Stat. 21, 41 U. S. C. 151, *et seq.*, and of the Armed Services Procurement Regulations are set forth in Appendix B, *infra*, pp. 46–53.[1]

[1] Appendix C, *infra*, pp. 54–64, consists of the rules and regulations of the Arkansas Contractors Licensing Board, promulgated under the above statute, as well as the prescribed forms for material, which must be filed by applicants for a license—application, affidavit, statement of experience and financial condition.

## STATEMENT

On or about May 11, 1954, appellant Leslie Miller, Inc., submitted a bid to the United States for the construction of certain facilities, at a cost of $1,093,431, on land in Arkansas owned by the United States (R. 1, 4). Appellant was awarded the contract, which was executed on May 12, 1954 (1–2, 4). On or about June 1, 1954, appellant began work (R. 2, 4).

The contract awarded appellant was for the construction of aircraft fueling facilities at Little Rock Air Force Base, Little Rock, Arkansas, including pipe lines, heavy and medium bomber refueling systems, bulk fuel storage facilities, etc. The United States distributed invitations to bid, dated April 8, 1954, to 32 firms located in Arkansas and 126 out-of-state firms. Bids were received from one Arkansas firm and 15 out-of-state firms, including appellant, a Fort Worth, Texas company. Of these 16 bidders, only 7 were then licensed by Arkansas. The 9 nonlicensed companies had their general offices in California, Indiana, Montana, New York, South Carolina and Texas.

On September 30, 1954, the Prosecuting Attorney of Pulaski County, Arkansas, filed in the local state court a two-count information charging that, when appellant (1) submitted the bid and (2) executed the contract and began work, it unlawfully engaged in business as a contractor without authority from the Arkansas Contractors Licensing Board, the state agency established by Arkansas law (Act 124 of 1939, as amended, Arkansas Statutes 1947, Sections 71–701 to 71–721, *infra*, pp. 34–45), to issue licenses for such activities (R. 1–2). Appellant was found guilty of

violating the state statute and was fined $100 on each of the two counts (R. 6–7).

According to the stipulation of facts entered into by the parties, the United States received on this contract, in addition to appellant's bid, bids from contractors who were licensed by the Arkansas Contractors Licensing Board.[2] However, appellant was the lowest responsible bidder and the contract was awarded to it as "required by applicable federal statutes and administrative regulations" (R. 5). Certain responsible bidders did not bid because they were not licensed to engage in the contracting business in Arkansas (R. 6).

On appeal to the Supreme Court of Arkansas, the United States filed a brief as *amicus curiae,* urging that the application of the state statute in the instant case was an unconstitutional interference with the operations of the Federal Government and, moreover, was in conflict with the federal statutes and regulations governing procurement by the United States. The Arkansas Supreme Court affirmed the judgment of conviction (R. 9–12). It held, first, that the

[2] The companion cases before the Arkansas Supreme Court (R. 9–12) involved three additional contracts awarded by the United States to two other Texas firms (Tecon Corporation, and Ramsey and Leftwich) and a Chicago firm (Engineering Construction Corporation), not licensed by Arkansas. These contracts were in the total amount of $5,460,000 for airfield paving and construction of a warehouse at the Little Rock Air Force Base and for the construction of National Guard facilities at the Fort Smith Municipal Airport, Fort Smith, Arkansas, which include a hangar, warehouse, motor service shop, water and fuel systems, etc. By agreement among the parties, the disposition of these cases will be controlled by this Court's decision in this case.

United States had not acquired jurisdiction over the land on which the contract was performed so as to exclude state regulation (R. 10–11).[3] Second, the court rejected the contention that the state statute was inapplicable "under the doctrine of implied intergovernmental immunity" (R. 11). The court pointed out that appellant was an independent contractor, not an agent or representative of the United States, and that "[t]he United States Government is not a party to this suit" (R. 12). It held that an independent contractor is not "clothed with governmental immunity" because of its contract with the United States, and cited decisions which sustained state taxes upon government contractors and state regulation of contractors "in the face of increased economic burdens passed on indirectly to the Government by the independent contractors" (R. 12).

## SUMMARY OF ARGUMENT

### I

A. The immunity of the functions of the United States from state interference is an essential element of the federal system. Under this principle, this Court has struck down a variety of state laws seeking to interfere with the Federal Government or persons carrying out a federal program. To be sure, the modern decisions have sustained state taxes on federal contractors, as well as state regulations resulting

[3] This portion of the decision below is plainly correct (*Adams* v. *United States*, 319 U. S. 312; 40 U. S. C. 255) and is not questioned by the appellant or the United States on this appeal. Appellant raised a contention in regard thereto in the court below (R. 10), but has abandoned the contention in this Court.

solely in a non-discriminatory increase in cost to the United States, on the theory that such indirect, non-discriminatory economic burdens could not interfere with federal functions. But this Court has consistently distinguished these economic burdens from state laws which would "interfere in any substantial way with the performance of federal functions" and hence would be invalid (*James* v. *Dravo Contracting Co.*, 302 U. S. 134, 157, 161).

The Arkansas Supreme Court erroneously relied upon the cases involving merely indirect economic burdens in sustaining the imposition of the state licensing requirement on federal contractors. Failing to take account of the distinction between a non-discriminatory increase in costs and a direct, substantial interference with federal programs, the court erred because it did not appraise the impact of the state licensing law upon the United States and did not consider whether the result was a "substantial interference."

B. The Arkansas statute unconstitutionally interferes with the functions of the Federal Government by forbidding contractors to bid upon, contract for, or undertake the performance of any project in Arkansas costing $20,000 or more, without a license from the State's Contractors Licensing Board. In addition, the statute permits the enjoining of any such work by an unlicensed contractor and declares his contracts unenforceable by either party thereto. Thus, the Act, if applicable here, would plainly limit the power of the Federal Government "to secure aid from independent contractors" (*Smith* v. *Davis*, 323 U. S. 111,

115) and "deprive [certain contractors] of power to serve the government" (*James* v. *Dravo Contracting Co.*, 302 U. S. 134, 154–55). Under the statute, only state-licensed contractors could bid on government construction in Arkansas, an unreasonable restriction upon the Government, especially since the nature of a federal project may require special skills, beyond the competence of Arkansas-licensed contractors. And the prescribed procedure for issuing licenses in Arkansas, particularly the requirements for filing applications 30 days before a meeting of the Board and for Board examination of applicants, will often operate, as it did here, to prevent interested unlicensed contractors from qualifying in time to submit bids. Consequently, the practical effect of the statute will often be to place the Government in the position either of abandoning any attempts to choose the best possible contractor for work in Arkansas or of foregoing any speedy letting of contracts for such work even though, as is frequently the case in military construction, time may be of the essence. The states lack power to erect barriers like this against congressionally-authorized federal operations.

## II

Aside from the inherent constitutional immunity of the United States, we submit that Congress has affirmatively exercised its recognized power to preclude the kind of restrictions Arkansas has attempted to impose upon federal procurement activity. The Armed Services Procurement Act of 1947 and the regulations under it set forth detailed standards un-

der which federal officers must exercise a carefully defined discretion in awarding contracts. Specific conditions govern the use of competitive bidding. Besides price, numerous other factors are to be considered and the contract must be awarded "to that responsible bidder whose bid * * * will be most advantageous to the Government, price and other factors considered." Section 3, Armed Services Procurement Act, 41 U. S. C. 152.

The instant contract was awarded in accordance with the applicable criteria laid down in the federal statute and regulations. Nevertheless, Arkansas claims the power to block it because appellant was not licensed by the State Board. In *Penn Dairies, Inc.* v. *Milk Control Commission,* 318 U. S. 261, 270, sustaining a state minimum-price regulation as applied to federal purchases, this Court pointed out that the regulation left federal officers free to select those with whom they would contract and the terms of the contracts. Here, in contrast, Arkansas has undertaken to nullify the determination of a federal contracting officer that appellant was the best contractor to construct the Federal project. Such state interference conflicts squarely with the express direction of Congress and must fail.

Finally, there is here no overriding local policy to which federal law should defer. There is no local need in this case comparable to that which figures so largely in the tax cases; the Federal Government's freedom to choose contractors is no threat to the fiscal soundness of the states. Furthermore, it can hardly be doubted that the requirements of the fed-

eral procurement law provide whatever local protection might be afforded by the State Board's judgment upon the qualifications of a contractor.

## ARGUMENT

### I

### ARKANSAS' LICENSING STATUTE CANNOT BE CONSTITUTIONALLY APPLIED IN THIS CASE BECAUSE IT DIRECTLY INTERFERES WITH THE FEDERAL GOVERNMENT'S POWER TO CHOOSE CONTRACTORS AND TO SCHEDULE CONSTRUCTION IN ARKANSAS

#### A. THE IMMUNITY OF THE UNITED STATES ATTACHES TO FEDERAL CONTRACTORS TO THE EXTENT NECESSARY TO PROTECT FEDERAL FUNCTIONS

The constitutional immunity from state regulation of the properties, functions, and instrumentalities of the Federal Government has long been firmly established. As an "unavoidable consequence of that supremacy which the constitution has declared" (*McCulloch* v. *Maryland*, 4 Wheat. 316, 436), this Court has struck down a variety of state regulations which transgressed the Federal Government's immunity.[4]

[4] *E. g.*, *Mayo* v. *United States*, 319 U. S. 441 (fertilizer distributed under federal program not subject to state inspection and stamp tax); *Arizona* v. *California*, 283 U. S. 423 (plans and specifications for federal dam not subject to approval of state engineer); *Hunt* v. *United States*, 278 U. S. 96 (federal agents in national forest and game preserve not restricted by state laws); *Johnson* v. *Maryland*, 254 U. S. 51 (driver of United States mail truck not subject to state licensing requirements); *Ohio* v. *Thomas*, 173 U. S. 276 (federal soldiers' home not subject to state law requiring display of placard where oleomargarine is served); *United States* v. *Snyder*, 149 U. S. 210 (federal lien enforceable regardless of state recording and time limitations).

The immunity is necessary "in order to maintain the essential freedom of government in performing its functions." *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 149–150. It is fundamental that "[t]he United States may perform its functions without conforming to the police regulations of a State." *Arizona* v. *California*, 283 U. S. 423, 451.

Originally, the scope of intergovernmental immunity from taxation as well as regulation was very broad. This broad immunity in the tax field stemmed from the Marshall court's belief that the power to tax was, by its nature, a destructive burden—a view which found expression in language treating state taxes along with fines or penalties as equivalent unlawful interferences with federal instrumentalities and contractors. *E. g.*, *McCulloch* v. *Maryland*, 4 Wheat. 316, 436; *Osborn* v. *United States Bank*, 9 Wheat. 738, 867. As a consequence, the Federal Government's immunity from state taxation was then considered to extend to income, property or transactions of many persons outside the Government who in some manner dealt with or acted for the Government. See cases collected in *United States* v. *Allegheny County*, 322 U. S. 174, 176–177, n. 1.

The earlier view of the tax immunities inherent in our federal system has been sharply curtailed in a modern series of decisions, which opened the way for state taxation of government contractors (*James* v. *Dravo Contracting Co.*, 302 U. S. 134), government employees (*Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466), and government lessees (*Oklahoma Tax Commission* v. *Texas Co.*, 336 U. S. 342; cf. *Helver-*

*ing* v. *Producers Corp.*, 303 U. S. 376). This curtailment is based on the view that an indirect, nondiscriminatory economic burden does not interfere with the United States, but is merely "the normal incident" of the coexistence of two taxing authorities in a federal system. *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. at 487; *Helvering* v. *Producers Corp.*, 303 U. S. at 386–87; *James* v. *Dravo Contracting Co.*, 302 U. S. at 156–57, 160; see *Penn Dairies* v. *Milk Control Commission*, 318 U. S. at 270–71.[5]

But while reformulating the doctrine of intergovernmental tax immunity, the Court has left otherwise intact the principle that the states cannot "retard, impede, burden, or in any manner control" the Federal Government (*McCulloch* v. *Maryland*, 4 Wheat. at 436). The sole exception from constitutional immunity which has emerged, as far as contractors with the Federal Government are concerned, is that of permitting state laws to impinge upon such contractors where the impact upon the United States is solely economic and is merely reflected in increased costs.

[5] In the landmark cases of the last twenty years, the United States supported the restrictions on federal tax immunity and strongly urged that federal contractors and employees should be held to be constitutionally taxable by the states. *James* v. *Dravo Contracting Co.*, 302 U. S. at 149; *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 472–75; see also *Smith* v. *Davis*, 323 111, 112; *Alabama* v. *King & Boozer*, 314 U. S. 1, 8–9. See particularly the Government's briefs *amicus* in *Dravo*, No. 3, Oct. Term, 1937, pp. 22–37, and *Graves*, No. 478, Oct. Term, 1938, pp. 72–81, suggesting that no burden was imposed upon the Government by such taxation.

This concept has been used in sustaining nondiscriminatory state taxes on federal contractors. *Esso Standard Oil Co.* v. *Evans*, 345 U. S. 495 (privilege tax); *Smith* v. *Davis*, 323 U. S. 111 (property tax on open account); *Curry* v. *United States*, 314 U. S. 14 (sales tax); *Alabama* v. *King & Boozer*, 314 U. S. 1 (sales tax); *James* v. *Dravo Contracting Co.*, 302 U. S. 134 (gross receipts tax).[6] The same principle was applied when the Court sustained the application to federal contractors of a New York safety requirement for building construction (*Stewart & Co.* v. *Sadrakula*, 309 U. S. 94) and when it held that Pennsylvania's minimum prices for milk controlled sales to a United States Army camp (*Penn Dairies, Inc.* v. *Milk Control Commission*, 318 U. S. 261). In both these cases, the tax precedents were found to govern because the sole impact on the United States was a possible increased economic burden. 309 U. S. at 104; 318 U. S. at 270.[7]

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[6] On the other hand, the Court has refused to sanction state taxes imposed directly on the United States itself or its property. See fn. 14, *infra*, p. 24.

[7] The opinions in *Penn Dairies* and *Stewart* cite *Baltimore & Annapolis R. R. Co.* v. *Lichtenberg*, 176 Md. 383, appeal dismissed, 308 U. S. 525, which involved state licensing and safety requirements applied to a trucking company under contract with the United States. Appeal was dismissed for want of a substantial federal question, citing cases on the general validity of motor vehicle regulation, without regard to the instant immunity problem. 308 U. S. 525. In *Stewart*, when the Court followed *Baltimore & Annapolis*, it considered the latter case as involving safety provisions analogous to those in *Stewart*, which imposed only an economic burden on the Government. 309 U. S. at 104. The Court has thus never ruled directly upon the problem of a licensing statute which, aside from an economic burden, directly limits the operations of the United States.

At the same time that it has allowed the states to impose such economic burdens upon the United States, indirectly through its contractors, the Court has consistently treated differently those situations in which state law, if held applicable, would impair or obstruct the attainment of federal objectives. In the broadest terms, the Court has indicated that the Federal Government's dealings with independent contractors are immune from state laws which "interfere in any substantial way with the performance of federal functions" (*James* v. *Dravo Contracting Co.*, 302 U. S. at 157, 161), or "handicap efforts to carry out the plans of the United States" (*Stewart & Co.* v. *Sadrakula*, 309 U. S. 94, 104). The states may not "deprive [independent contractors] of power to serve the government as they were intended to serve it" (*James* v. *Dravo Contracting Co.*, 302 U. S. at 154–155, quoting *Railroad Company* v. *Peniston*, 18 Wall. 5, 36; *Smith* v. *Davis*, 323 U. S. 111, 116), or "affect or embarrass in any substantial measure the power of the United States * * * to secure aid from independent contractors" (*Smith* v. *Davis*, *supra*, at 115; cf. *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514, 526). See *Osborn* v. *United States Bank*, 9 Wheat. 738, 867.

In the present case, the Arkansas Supreme Court did not attempt to appraise the impact of the state licensing statute upon federal activities. Rather, it summarily disposed of the immunity question by brief reference to the decisions which have allowed state taxation and regulation of Government contractors resulting only in increased economic burdens passed

on to the United States.[8] In relying on these authorities, the court below failed to take note of the clear distinction, formulated by the decisions of this Court, between taxation and analogous regulation imposing only economic burdens and, on the other hand, state regulatory schemes which interfere with or obstruct in a substantial way the performance of federal functions. As we shall now show, the Arkansas Contractors' Licensing Act falls in the latter class, and the Arkansas court therefore erred in holding that the statute could validly be applied to contractors with the United States.

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[8] The Arkansas Supreme Court cited several cases, in addition to *Penn Dairies* and *Stewart*, as dealing with state regulation of federal contractors (R. 12). Some of these merely reiterate the theory that indirect economic burdens on the United States are valid; others seem to be irrelevant.

Thus, *Ralph Sollitt & Sons Construction Co.* v. *Commonwealth*, 161 Va. 854, appeal dismissed, 292 U. S. 599, involved a non-discriminatory tax on a federal contractor and the contention, irrelevant here (see p. 5, fn. 3, *supra*), that the project was undertaken on land within exclusive federal jurisdiction. In *E. E. Morgan Co.* v. *State*, 202 Ark. 404, the federal contractor, a foreign corporation, was penalized for doing business without being domesticated under state law. It apparently urged only the economic burden, which the state court properly rejected (202 Ark. at 408), and this Court dismissed the appeal, citing *Stewart* and the tax cases. 314 U. S. 571.

In *Railway Mail Association* v. *Corsi*, 326 U. S. 88, the Court held that a New York law prohibiting racial and religious discrimination in labor organizations was validly applied to an organization of postal clerks. The Court saw no interference of any kind—economic or otherwise—with the United States' operation of the mails. See fn. 9, *infra*, p. 17.

*Ohio River Contract Co.* v. *Gordon*, 244 U. S. 68, involved the irrelevant and insubstantial claim by a federal contractor that a state court had no jurisdiction over it in an ordinary tort action because of its contract relation with the United States or because it was on land within exclusive federal jurisdiction.

B. THE ARKANSAS STATUTE SERIOUSLY IMPEDES OR WHOLLY BLOCKS THE FEDERAL GOVERNMENT IN INVITING BIDS AND SELECTING CONTRACTORS

In our view, it is plain that the Arkansas statute substantially interferes with a federal function. It constricts the power of the Federal Government "to secure aid from independent contractors" (*Smith* v. *Davis*, 323 U. S. 111, 115) and "deprives [certain contractors] of power to serve the government" (*James* v. *Dravo Contracting Co.*, 302 U. S. 134, 154–55). Its effect, as applied in this case, is to compel the Federal Government, when planning construction in Arkansas, to use only contractors who have been approved by the State Board. Although the statute is undoubtedly intended in part as a measure of protection for persons dealing with contractors, when the United States seeks to construct facilities for itself, the Constitution shields it from such intervention or "protection" by other members of the federal system.

The Arkansas Act requires that a contractor be licensed before he "attempts to or submits a bid or bids to construct, or contracts to construct, or undertakes to construct, or assumes charge, in a supervisory capacity or otherwise, of the construction, erection, alteration or repair" of any project whose cost is $20,000 or more (Section 13, App. A, *infra*, pp. 42–43). Such acts by an unlicensed contractor are declared to be misdemeanors punishable by fine of from $100 to $200 for each offense, each day constituting a separate offense (Section 13). The Licensing Board

is empowered to secure injunctions, upon affidavit and without bond, restraining performance of any work in violation of the Act (Section 17, App. A, *infra*, p. 44). All invitations for bids and specifications for work to be contracted in Arkansas must include a copy of the Act to notify invited bidders that a license is required before a bid will be considered (Section 18, App. A, *infra*, p. 44). A contract entered into by an unlicensed contractor is declared unenforceable at law or in equity (Section 13, App. A, *infra*, p. 43).

Plainly, if the statute is applicable, an unlicensed contractor would not be able even to bid on a contract with the Federal Government in Arkansas, let alone carry out the work. This is made clear by the fact that, under the regulations of the Contractors Licensing Board, each applicant for a license must file an affidavit that he is not a party to any contract in Arkansas for work in the amount of $20,000 or more, that he has no outstanding bid for work in Arkansas in the amount of $20,000 or more, and that he will not bid on any such work until his application is acted upon and a license is granted him. App. C, *infra*, p. 56.

Consequently, under the decision below, the United States must choose for its construction work in Arkansas only state-licensed contractors. This is in itself an unconstitutional restriction, for the Government must be free to select its contractors. Cf. *Smith* v. *Davis*, 323 U. S. 111, 114; *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514, 526; *Railway Mail Ass'n* v.

*Corsi,* 326 U. S. 88, 95–96.* The Government may often wish, as it did in this case and the companion cases before the Arkansas Supreme Court (fn. 2, *supra,* p. 4), to open the bidding to contractors not already licensed. Indeed, it may be essential to do so where a proposed federal facility has no previous counterpart in the state, or requires special skills beyond the competence of Arkansas licensed contractors.

For instance, in the present case the contract was for the construction of aircraft fueling facilities, including pipe lines, heavy and medium bomber refueling systems and bulk fuel storage facilities. See *supra,* p. 3. Special skills were required. While invitations were distributed to 32 firms located in Arkansas and 126 out-of-state firms, only 16 bids were received, and of these 16 bids, 9 were from construction companies not licensed by Arkansas at that time, including appellant (of Fort Worth, Texas) and others located in California, Indiana, Montana, New York, South Carolina, and Texas. The effect of the holding below is to restrict the Government's choice of contractor to the seven bids from the Arkansas-licensed contractors.

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* In *Railway Mail Ass'n* v. *Corsi,* when the Court held that federal interests could not possibly be hampered by a New York law prohibiting discrimination in membership by an organization of postal clerks (f. 8, *supra,* p. 14), the Court stated that the law "does not impinge on the federal mail service or the power of the government to conduct it. *It does not burden the government in its selection of employees or in its relations with them.* Nor does it operate to define the terms of that federal employment or relate to any aspect of it" (326 U. S. at 95–96). [Emphasis added.]

The onerous and improper character of this attempted restriction upon the Federal Government is accentuated by the fact that the state licensing procedure makes compliance almost impossible for a contractor found most suitable by federal officials but not already licensed by Arkansas. Under the statute, the Arkansas Licensing Board holds two regular meetings a year, in February and August, with special meetings as provided for in the Board's bylaws or resolutions (Section 4; App. A, *infra,* pp. 36–37). Written applications for examinations for licenses must be filed thirty days prior to meetings of the Board (Section 8, App. A, *infra,* pp. 39–40), and there is no provision for waiver of the 30-day period. If the application complies with the Board's rules and regulations, the applicant is entitled to an examination of his qualifications. If the result of the examination is satisfactory, the Board will, when a meeting is held, issue a certificate to engage in general contracting in Arkansas. Anyone failing the examination may be reexamined, but only at a regular meeting of the Board (Section 8).

Accordingly, if the Act applies to federal contractors, the United States, if it wishes to receive bids from contractors generally, must so time the issuance of its invitation for bids as to come more than thirty days before the Board's February and August meetings, or a special meeting. In addition, it must keep the invitation open for what may be a several-month interval between application and license-issuance before it will be in a position, as a practical matter, to award the contract. This is true even if contractors

previously licensed in Arkansas turn out to be the most competent to do the work. For since the statute prohibits even the submission of a bid before a license is obtained, the Government will be unable to compare the alternative contractors, examining their estimates and abilities, until sufficient time has elapsed for all interested contractors to apply for and obtain their licenses and thereafter to submit their bids.

The facts of the instant case concretely demonstrate the effect of this licensing obstacle upon federal construction in Arkansas. The Government's invitation in connection with the construction work here involved, issued on April 8, 1954, provided that the bids would be opened on May 11, 1954.[10] The one-month interval between the invitation and the opening did not coincide with any of the regular meetings of the Licensing Board [11] and, in any event, was too short to

[10] The additional three contracts involved in the companion cases before the Arkansas Supreme Court (fn. 2, *supra*, p. 4) provided the following time periods between invitations and opening of bids:

(1) January 29, 1954, to March 18, 1954 (Tecon Corporation);

(2) March 12, 1954, to April 13, 1954 (Engineering Construction Corporation);

(3) April 13, 1954, to May 13, 1954 (Ramsey and Leftwich).

[11] The rules and regulations promulgated by the Board provide that special meetings may be called by the chairman or a majority upon 48 hours notice to the members (*infra*, p. 54). We have been advised that special meetings are ordinarily called when ten or more applications are pending, or, upon fewer applications when other business requires it, and that the Board meets on the average 18 times a year. However, since the Board considers the 30-day period between application and meeting to be mandatory and non-waivable, a minimum of 6 weeks elapses between application and issuance of a license, and the usual time for such action is longer.

obtain a license under the prescribed statutory procedures.

The interval between invitation and award was only a few days more than the statutory 30-day waiting period which must elapse and which is considered mandatory before the Arkansas Board will meet to consider applications. But prospective bidders need time after invitations are issued to decide whether they are sufficiently interested in the contract to apply for a license. Later, if a contractor proposes to bid and seeks to comply with the Arkansas statute, time is needed for the Arkansas Board to meet, examine, and issue licenses. Only after these delays would the contractor be able to submit his bid. Thus, if the state statute is applicable, this contract could not possibly have been let on May 12, 1954, to a contractor who, prior to the issuance of the invitation, was not already licensed. That is to say, the contract could not have been made and performed as the federal officers, unquestionably acting under the federal statute and regulations governing their action, made and performed this contract.

In the same way, other facts in this case reveal vividly the direct conflict between federal and state authority. It is stipulated (R. 6) that only about one-tenth of the contractors solicited submitted bids and, most significantly, some responsible contractors did not bid because they were unlicensed. *Supra*, pp. 3–4. Thus, the state statute effectively deprived the Government of bids from contractors to whom the Government might well have preferred to have awarded the contract. Again, it is clear that the effect

of the statute is to compel the United States to choose a state-licensed contractor and abandon any attempt to canvass all qualified contractors, or, in the alternative, to forego speedy letting of contracts in Arkansas. While the letting of contracts may feasibly be delayed in some instances to permit contractors to apply for and be issued licenses, time obviously is of the essence in many, if not most, military construction projects.[12] Where this is so, the Arkansas statute would prevent the Government from having the work done by an unlicensed contractor even though none of the licensed contractors were in fact capable of performing the work as required.

A further obstruction to the Government's choice of contractor is the statute's requirement that a license be issued only upon the applicant's passing of an examination. A contractor who fails the examination may be re-examined only at a regular meeting of the Board, *i. e.*, in February or August. Section 8, App. A, *infra*, p. 40. We are advised that, at present, the Board does not conduct any written or oral examination but satisfies itself with consideration of a lengthy statement of experience and financial condition, which is filed with the application, attested by the applicant, and supported by an audit by certified public accountants. See App. C, *infra*, pp. 55*ff*. Thus, if the Arkansas statute applies to federal contractors, the Fed-

[12] We are advised that the Army's prevailing practice is to permit 30 days to intervene between invitation and opening; however, the interval may be reduced to as little as ten days when necessary because of climatic considerations, meeting of other contract scheduling or military priority, to list a few of the reasons.

eral Government's choice of a contractor may be not only delayed but completely blocked by the State Board's rejection of the contractor's application.

Such rejection would go far beyond any merely economic burden on the United States. For the federal choice of a contractor is not a mechanical process of picking the lowest bidder. The contracting officer is under a duty to weigh the qualifications, experience and estimates of all bidders and then to award the contract "to that responsible bidder whose bid * * * will be most advantageous to the Government, price and other factors considered." Section 3, Armed Services Procurement Act of 1947, 41 U. S. C. 152, App. B, *infra,* p. 49. The federal statutes and regulations establish standards for procurement which, as we shall show, *infra,* pp. 25–32, affirmatively preclude any interjection of state licensing laws in the field of federal contracts. But they also emphasize the constitutional bar, for they demonstrate that the federal officers have one essential duty—to carry out the federal program expeditiously, prudently and effectively—and that the effect of the state statute is substantially to interfere with the discharge of this duty.

Nothing in this Court's decisions indicates that such interference is to be countenanced. The state tax cases, of course, involve only economic burdens, and the resulting cost increase to the United States is the "normal incident" of a federal system. Neither the storage of Government-owned aviation gasoline (*Esso Standard Oil Co.* v. *Evans,* 345 U. S. 495) nor the construction of an army airport (*Smith* v. *Davis,* 323 U. S. 111), an army camp (*Alabama* v. *King &*

*Boozer*, 314 U. S. 1) and locks and dams (*James* v. *Dravo Contracting Co.*, 302 U. S. 134) were affected or hampered in any substantial or essential way by the taxes in the cited cases. The same is true of the regulatory provisions which had solely economic consequences for the construction of a post office (*Stewart & Co.* v. *Sadrakula*, 309 U. S. 94) or the purchase of milk (*Penn Dairies* v. *Milk Control Commission*, 318 U. S. 261). The United States, in all these cases, had the untrammelled power to decide when and how each project would be undertaken, who would be its contractor, and how fast it would proceed. See *supra*, pp. 10–12.

The Arkansas statute, on the other hand, would substantially hamper the Government either in its choice of contractors or in its control over the schedule of construction. Other states, besides Arkansas, have licensing provisions for contractors. If these are to apply to contractors for the United States, the Government's freedom to act will be severely curtailed.[13] The application of such statutes to federal contractors is a substantial interference with federal functions and as a consequence is precluded by the Constitution.

[13] In New Mexico and Arizona, an even longer interval is required between invitation and award, if a contract is to be open to all responsible contractors. Applicants for license are required to have maintained an office in the state for at least 90 days preceding the application; and this requirement may be disregarded only when the applicant is a specialty contractor and there are less than ten contractors operating in the state who are licensed for this specialty. Ariz. Code 1939, Sec. 67–2306 (1952 Supp.); N. M. Stat. 1953, Sec. 67–16–5.

It is true but immaterial that, as the court below observed (R. 12), the United States is not a party in this case and that Arkansas has here prosecuted only the contractor. It remains none the less clear that the State has impeded the Federal Government's power "to secure aid from independent contractors" (*Smith* v. *Davis*, 323 U. S. 111, 116), and this is decisive of the invalidity of the state action.[14]

Moreover, the Arkansas licensing statute imposes direct restrictions upon those who employ contractors as well as upon the contractors themselves, rendering even more clearly inconsequential the fact that the United States is not a party to this particular case. The Act requires the inclusion in all invitations for

[14] The state court's reliance on the fact that the United States is not a party represents a clear misapplication of the tax immunity decisions. In the tax field, since an indirect economic burden upon the United States is now permissible (*supra*, pp. 10–12), constitutional objections arise only if the tax falls directly upon the "possessions, institutions, and activities of the Federal Government itself." *United States* v. *Allegheny County*, 322 U. S. 174, 177. Consequently, taxes with the same economic effect are held valid or invalid depending upon the immediate incidence. Compare *Alabama* v. *King & Boozer*, 314 U. S. 1, with *Kern-Limerick, Inc.*, v. *Scurlock*, 347 U. S. 110; *Esso Standard Oil Co.* v. *Evans*, 345 U. S. 495, with *United States* v. *Allegheny County*, 322 U. S. 174. Similiarly, state regulation which results only in increased costs for the Government, is valid if it is not "upon" the United States. *Penn Dairies* v. *Milk Control Commission*, 318 U. S. at 270; *Stewart & Co.* v. *Sadrakula*, 309 U. S. at 105. In the instant case, however, substantial interference with the United States is involved, not only—or even necessarily—increased costs. The Arkansas Act is inapplicable to the United States, regardless of its immediate incidence, if it is "an interference with government, or an impairment of the efficiency of its agencies in any substantial way." *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 157.

bids and specifications "a copy of this Act, or such portions thereof, as are deemed necessary to convey to the invited bidder, whether he is a resident of this State, or not, the information that it will be necessary for him to have evidence of a license before his bid is considered" (Section 18, App. A, *infra*, p. 44). And both parties to the contract are equally precluded from bringing any action, "either at law or in equity to enforce any provision of any contract entered into in violation of this act" (Section 13, App. A, *infra*, p. 43).

Since the effect of the Arkansas statute is thus to impede or block the Government's power to select contractors and to schedule construction in the state, the court below erred in holding that Arkansas had the power to impose these restrictions on Government contractors.

## II

### THE ARKANSAS STATUTE CANNOT BE APPLIED TO A FEDERAL CONTRACTOR BECAUSE IT IS INCONSISTENT WITH FEDERAL LAW REGULATING PROCUREMENT BY THE UNITED STATES

Aside from the general constitutional immunity protecting the Federal Government's activities, the application of the Arkansas licensing statute conflicts squarely with specific federal legislation and regulations governing procurement by the United States. Congress has the power, of course, to preclude state regulation of instrumentalities and contractors utilized by the Federal Government. *Franklin National Bank* v. *New York*, 347 U. S. 373; *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232; *Federal Land Bank* v. *Bis-*

*marck Co.*, 314 U. S. 95; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21; see *Penn Dairies, Inc.* v. *Milk Control Commission*, 318 U. S. 261, 269, 271–78. We submit that Congress has done so here.

A comprehensive scheme of procurement policies is found in the Armed Services Procurement Act of 1947 (Act of February 19, 1948, 62 Stat. 21, 41 U. S. C. 151 *et seq.*), App. B, *infra*, pp. 46–49, and the regulations under it (32 CFR c. I(A), V(G), VII(J) (1954)), App. B, *infra*, pp. 49–53, which have the force of law. *Standard Oil Co.* v. *Johnson*, 316 U. S. 481, 484; *Johnson* v. *Yellow Cab Co.*, 321 U. S. 383, 389–90; cf. *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110; *United States* v. *Allegheny County*, 322 U. S. 174, 182–83.

The standards with which federal officials are directed to comply, and the judgments they are expected to exercise, are laid out in substantial detail. The Act contemplates that the great majority of contracts for supplies and services will be placed through competitive bidding, but that in certain situations the public interest requires purchases to be made by negotiation. Sections 2 (c), (3), App. B, *infra*, pp. 46, 49; see H. Rep. No. 109, 80th Cong., 1st Sess., p. 3; S. Rep. No. 571, 80th Cong., 1st Sess., p. 2. The Act sets forth 16 situations in which contracts may be negotiated without advertising, including, among others, where the public exigency will not allow delay, where it is impractical to secure competition, and where it is in the interest of the national defense that a particular plant be kept available. Section 2 (c) (1)–(16), App. B, *infra*, pp. 46–48. It also declared to be the policy of Congress that a fair proportion of contracts be placed

with small business concerns. Section 2 (b), App. B, *infra*, p. 46.

Even when awards are made on the basis of competitive bidding, there is no single dispositive factor. The guiding principle is not a mechanical acceptance of the lowest bid, but rather that the award must be made "to that responsible bidder whose bid * * * will be most advantageous to the Government, price and other factors considered" (Section 3, App. B, *infra*, p. 49). Armed Services Procurement Regulations 1.307, 1.307.1, 2.406–1, App. B, *infra*, pp. 49–51, define a "responsible bidder" as one with adequate financial and technical resources and a satisfactory record of performance, integrity, judgment and skills.[15] Expanding upon the factors to be considered, Regulation 2.406–3, App. B, *infra*, p. 51, provides that, besides price, procurement officials are to take into account, *inter alia*, the judgment, skill and integrity of the bidder; his reputation and experience; prior work of a similar nature done by him; and the advantages or disadvantages to the Government that might result from making multiple awards. When contracts are negotiated, Regulation 3.101, App. B, *infra*, pp. 52–53, requires contracting officers to give due attention to a minimum of 19 factors there listed. See also Army

[15] The pertinent committee reports explain that the determination of whether

"* * * a particular bidder is a 'responsible bidder' requires sound business judgment, and involves an evaluation of the bidder's experience, facilities, technical organization, reputation, financial resources, and other factors. * * * broad discretion is accordingly reserved to the service in this respect." [H. Rep. No. 109, 80th Cong., 1st sess., pp. 18–19; S. Rep. No. 571, 80th Cong., 1st Sess., p. 16.]

Procurement Regulations 590.301, 590.357 (32 CFR 590.301, 590.357).[16]

The Act and regulations thus required the federal procurement officials concerned with the instant contract to exercise their judgment and discretion by giving due consideration to a number of stated factors. See S. Rep. No. 571, 80th Cong., 1st Sess., pp. 2–3. Congress expressed its controlling objective that "the exercise of judgment by the purchasing officer should not merely be permitted but should be encouraged." *Id.* at p. 3. And there is no question but that the contract in this suit was awarded to appellant in accordance with the governing federal law and regulations.

Evidently, in the opinion of the responsible officials, the bidding contractors licensed by Arkansas were not as well qualified to carry out the federal program as appellant, an out-of-state contractor not licensed by Arkansas. It was probably foreseeable that in constructing the uncommon aircraft fueling facilities here involved, the Government might have to look beyond previous Arkansas licensees to find the best qualified contractor. This award cannot be questioned by the unsuccessful bidders themselves, and it is not

[16] The regulations also provide that certain persons will not be awarded contracts. Those made ineligible include firms and individuals found to have violated the Walsh-Healey Act (41 U. S. C. 37), the Davis-Bacon Act (40 U. S. C. 276a–2 (a)), and the Buy-American Act (41 U. S. C. 10b); firms and individuals convicted in a court of competent jurisdiction of fraud or violation of the anti-trust laws; and firms and individuals found by clear and convincing evidence to have violated certain named contract provisions. See 32 CFR 1.600 to 1.609; 32 CFR 590.600–50 to 590.609.

reviewable by the courts. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 125–29; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464; *Kansas City Power & Light Co.* v. *McKay*, 225 F. 2d 924 (C. A. D. C.), certiorari denied, 350 U. S. 884. Any interference by state governments would also constitute an infringement of the "principle acted upon since the Nation's founding under which the legislative and executive departments have exercised complete and final authority to enter into contracts for Government purchases." *Perkins* v. *Lukens Steel Co.*, 310 U. S. at 128.

Nevertheless, Arkansas has sought to nullify the award and restrict the United States to state-licensed contractors. It would compel the federal officials to abandon their considered judgment in choosing appellant and to select a contractor who, while licensed by Arkansas, nevertheless does not as fully satisfy the criteria determining the lowest responsible bidder. In *Penn Dairies, Inc.* v. *Milk Control Commission*, 318 U. S. 261, considering whether a state's minimum price regulation conflicted with the federal procurement statutes and regulations, this Court held that the Federal statutes were "wholly consistent" with acceptance of local price regulation since Congress had specifically excused competitive bidding when it was "impracticable to secure competition" (318 U. S. at 272–73, 277), and because numerous other provisions negated an inflexible policy of taking the lowest bid (*id.* at 273–75). The Army's regulations were found explicitly to have left the question as to the applicability

of state price legislation to the courts (*id.* at 276–78). And the Court pointedly noted that the state regulation imposed "no prohibition on the national government or its officers" (*id.* at 270).

In contrast, there is no provision of statute or regulation which can be adduced to support the subordination of federal procurement to the instant Arkansas statute. And the Arkansas statute would not only require federal officers to include the State's licensing requirements in their invitations to bid (Section 18, App. A, *infra*, p. 44), but declares unenforceable "any provision of any contract entered into in violation of this Act" (Section 13, App. A, *infra*, p. 43). The result would not be merely an adjustment in price terms and increased cost, as in *Penn Dairies*, but a nullification of the Federal Government's choice of contractor. Arkansas, in effect, warns the Federal Government that if its officials persist in determining for themselves the means of implementing the federal legislation and regulations, the State will prosecute the Government's contractors, will enjoin them from performing their contracts, and will prevent the enforcement of contractual rights arising under the Government's contract. Plainly, the national procurement policy established by Congress, and directed to be enforced by federal officials, is inconsistent with the continued existence of these burdens. The Arkansas statute must, therefore, give way.

This conclusion is buttressed by the fact that no state need or policy suffers any appreciable damage

by denying the power of Arkansas to apply its licensing statute to contracts with the Federal Government. This Court, in curtailing the immunity in the tax situation, concluded not only that the United States would not be hindered by a lesser immunity (see *supra*, pp. 10–12), but also that an extended immunity would threaten the fiscal soundness of the states. See *Esso Standard Oil Co.* v. *Evans*, 345 U. S. at 500; *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. at 490 (Frankfurter, J., concurring). No comparable result could follow if federal contractors are excluded from coverage of the state licensing statute. Indeed, since the Government's construction projects are often—as in the instant case—of a unique nature and solely for federal use, there is no reason to expect that the normal application of the licensing statute would be at all affected.

Furthermore, the case is unlike *Stewart & Co.*, v. *Sadrakula*, 309 U. S. 94, and *Penn Dairies, Inc.* v. *Milk Control Commisison*, 318 U. S. 261, in which the local regulation safeguarded the health and safety of New York and Pennsylvania citizens while merely increasing the cost of federal operations. See 309 U. S. at 104; 318 U. S. at 279–81. A superficial argument may be made that the Arkansas licensing statute is designed to protect the public health and safety in that the licensing board is required to consider, among the qualifications of any applicant for a license, his experience, ability, character, manner of performance of previous contracts, financial condition and equipment (Section 9, App. A, *infra*, pp. 40–41). But

this provision is paralleled by the federal procurement law; it cannot be seriously suggested that the United States is incompetent—or demonstrably less competent than Arkansas' part-time Licensing Board—to pass upon the qualifications of its independent contractors, or that it fails to do so. See *supra*, pp. 26–28. Moreover, the standard form provisions of government contracts embody statutory requirements which are designed to safeguard the interests of all citizens, including those of Arkansas. See U. S. Standard Form Nos. 23–Rev., 25–A, 41 U. S. C. App. 54.13, 54.16. And compare, as to fraud and misconduct, Section 11 of the Arkansas Act with 32 CFR 1.604–1, 590.604. There is no reasonable ground for permitting Arkansas to require "qualifications in addition to those that the Government has pronounced sufficient." *Johnson* v. *Maryland*, 254 U. S. 51, 57. This is particularly so where the Arkansas statute is not merely a local rule which "might affect incidentally" the contractor's operations, "as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets" (*id.* at 56), but a prime piece of legislation which directly hampers and conflicts with the federal program.

It is apparent, in short, that striking down the state statute as applied to government contractors would not seriously impair the police power of the State or prevent its objectives from being realized. It would achieve only the salutary and constitutionally required end of permitting the realization of the Federal Government's objectives and programs.

CONCLUSION

For these reasons, it is respectfully submitted that the judgment below should be reversed.

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OCTOBER 1956.

# APPENDIX A

Act 124 of Arkansas Acts 1939, as amended, Arkansas Statutes 1947, Sections 71-701 to 71-721, provides:

SECTION 1 [as amended by Act 153, Arkansas Acts 1951, Sec. 1]. For the purposes of this act a 'contractor' is defined to be any person, firm, partnership, co-partnership, association, corporation, or other organization, or any combination thereof, who for a fixed price, commission, fee or wage attempts to or submits a bid or bids to construct, or contracts or undertakes to construct, or assumes charge, in a supervisory capacity or otherwise, of the construction, erection, alteration or repair, or has or have constructed, erected, altered, or repaired, under his, their or its direction, any building, highway, sewer, grading or any other improvement or structure, when the cost of the work to be done, or done, in the State of Arkansas by the contractor, including but not limited to labor and materials, is twenty thousand dollars ($20,000.00) or more.

Architects and engineers, whose only financial interest in a project shall be the architectural or engineering fees for preparing plans, specifications, surveys and such supervision as is customarily furnished by architects and engineers, are specifically excluded from this act.

Wherever the term "general contractor" shall appear in this act it shall mean "contractor", as hereinbefore defined, and wherever the term "general contracting" shall appear in this act it shall mean "contracting."

SECTION 2. That there is hereby created a State Licensing Board for General Contractors, [changed to "Contractors Licensing Board"—Act 153, Arkansas Acts 1951, Sec.

5[1]] consisting of five (5) members, who shall be appointed by the Governor. Each member shall be at least thirty-five (35) years of age, a resident of the State of Arkansas, and a general contractor of not less than ten (10) years' experience in responsible charge of construction projects of magnitude consistent with the duties of his office. At least one member of such Board shall have had as a larger part of his business the construction of highways. At least one member of such Board shall have had as a larger part of his business the construction of sewers and waterworks. At least one member of such Board shall have had as larger part of his business the construction of buildings. The members of the Board shall be appointed for one, two, three, four, and five years, respectively, their terms expiring on the 31st day of December of said year. Thereafter in each year the Governor shall appoint to fill the vacancy caused by expiration, for a term of five years. Each member shall hold over, after the expiration of his term, until his successor shall be duly appointed and qualified. If a vacancy shall occur in the Board for any cause, same shall be filled by appointment by the Governor, and the Governor may remove any member of the Board at any time for misconduct, incompetency or neglect of duty.

SECTION 3. That each member of the Board shall receive a certificate of appointment from the Governor, and, before entering upon the

[1] Section 5 of Act 153, Arkansas Acts 1951 (Arkansas Stats. 1947, Sec. 71-702.1) provides:

"The State Licensing Board for General Contractors shall be known hereafter as the 'Contractors Licensing Board,' and wherever the name 'State Licensing Board for General Contractors,' or the word 'Board,' shall appear in Act 124, approved February 24, 1939, or acts amendatory thereof, such name and word shall mean 'Contractors Licensing Board." The Board shall adopt a seal for its use which shall have on it the words 'State of Arkansas Contractors Licensing Board.' "

discharge of the duties of his office, shall file with the Secretary of State the constitutional oath of office. Each member of the Board first created shall receive a license to operate as a general contractor under this Act from the Governor, and thereafter no one shall be eligible for appointment on the Board who does not at the time hold an unexpired license to operate as a general contractor in Arkansas under this Act, and who has not been a bona fide resident of Arkansas for the previous five (5) years, and at the time of appointment does not maintain his general office in Arkansas. The Board, or any Committee thereof, shall be entitled to the services of the Attorney General, or the Legal Department of the State, in connection with the operation of the affairs of the Board. Such additional legal counsel, however, may be employed by the Board from time to time as it may deem necessary.

SECTION 4. That the Board shall, within (30) days after its appointment by the Governor, meet in the City of Little Rock at a time and place to be designated by the Governor, and at said meeting shall elect a Chairman, Vice-Chairman, and Secretary each to serve in his respective capacity for one year, and thereafter said officers shall be elected by said Board annually. Said Board shall have power to make such by-laws, rules, and regulations for its operation as it shall deem best; provided the same are not in conflict with the laws of the State of Arkansas. The Board shall adopt a seal for its own use. The seal shall have on it the words, "Arkansas State Licensing Board for General Contractors, Seal," [changed to "State of Arkansas Contractors Licensing Board"—Act 153, Arkansas Act of 1951, Sec. 5, n. 1, p. 35, *supra*] and the Secretary shall have charge, care and custody thereof. That within sixty (60) days after the Board has been organized, it shall meet for the purpose of receiv-

ing applications for certificates to engage in the business of general contracting, and for the transaction of such other business as may come before it, and thereafter shall have two (2) regular meetings in each year; one in the month of February, and one in the month of August, for the purpose of transacting such business as may properly come before it, on call of the Chairman of the Board. Special or adjourned meetings may be held at such time as the Board may provide by the by-laws which it shall adopt, or at such time as the Board may, by reasonable resolution, provide. Due notice of each meeting and the time and place thereof shall be given to each member in such manner as the by-laws shall provide. Three (3) members of the Board shall constitute a quorum. All meetings of the Board shall be held in Little Rock, Arkansas.

SECTION 5. The Secretary shall keep a record of the proceedings of said Board, and shall receive and turn over to the Treasurer of the State of Arkansas all moneys derived from the operation of this Act, and shall draw and certify all vouchers for expenses incurred by the Board. The said vouchers shall be countersigned by the Chairman of the Board, and drawn to the Auditor of the State of Arkansas who shall issue warrants to the Treasurer of the State of Arkansas for the payment of such certified expenses. All moneys received by the State Treasurer shall be kept by him as a separate fund styled "General Contractor's Fund." The Secretary shall give bond in such sum as the State Treasurer shall determine with such surety company as shall be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of the duties of his office, and upon the faithful accounting of all moneys and other properties which shall come into his hands.

SECTION 6 [as amended by Act 153, Arkansas Acts 1951, Sec. 2]. Each Member of the Board shall receive fifteen dollars per day while the Board is in session, and reimbursement for necessary traveling expense, board and lodging. The Board shall have the power to employ an assistant secretary at not more than two hundred dollars per month; an attorney-investigator at not more than three hundred dollars per month; two senior clerks at not more than one hundred seventy-five dollars per month each; and, two junior clerks at not more than one hundred thirty-five dollars per month each [changed by Act 245, Arkansas Acts 1953 [2]]. All expenses incurred by the Board for the administration of this Act are hereby authorized to be paid by the Board; provided, however, no funds may be expended for the purpose of purchasing or constructing a building or any portion of a building.

SECTION 7 [as amended by Act 217, Arkansas Acts 1945, Sec. 1]. That the Secretary shall keep a register of all applications for license showing for each the date of application, name, qualification, place of business, place of residence, and whether the license was granted or refused, as well as a complete transcript of the proceedings, including evidence submitted by applicants, licensees, the Board, or otherwise, at any hearing. The books and register of this Board, including transcripts of proceedings, shall be prima facie evidence of all matters recorded therein, and a certified

[2] Act 245, Arkansas Acts 1953, provides:

"SECTION 1 [Arkansas Statutes 1947, Sec. 71-721]. The Contractors Licensing Board is hereby authorized to employ an Assistant Secretary at a salary of not more than $300.00 per month; one Senior Clerk at a salary of not more than $275.00 per month; and two Junior Clerks at a salary of not more than $200.00 per month each.

"SECTION 2. All laws and parts of laws in conflict herewith are hereby repealed."

copy of such books or register, including transcript of proceedings, under the seal of the Board attested by its Secretary, shall be received in evidence in all courts of the State in lieu of the original. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the Secretary of the Board as soon as convenient, and not more than ninety (90) days after the Board shall have organized, and during the month of August of each succeeding year. Such roster shall be ordered printed by the Board and paid for out of the funds herein appropriated for the operation of this Act. On or before the first day of August of each year, the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the ~~Board, attested by its Secretary, shall be re-~~ Board attested by the affidavit of the Chairman and Secretary, and copy of said roster of licensed general contractors.

SECTION 8 [as amended by Act 217, Arkansas Acts 1945, Sec. 2, and Act 153, Arkansas Acts 1951, Sec. 3]. That any one, other than members selected by the Governor as hereinbefore provided, hereafter desiring to be licensed as a general contractor in this State shall make and file with the Board thirty (30) days prior to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed, for examination by the Board, said application to be accompanied by a certified check in the sum of Fifty Dollars ($50.00) payable to the Contractors Licensing Board. If said application complies with the Board's rules and regulations, then the applicant shall be entitled to an examination to determine his, their, or its qualifications. If the result of the examination of any applicant shall be satis-

factory to the Board, then the Board shall issue to the applicant a certificate to engage in general contracting in the State of Arkansas. Any person thus receiving a certificate of license from the Board shall forthwith have it recorded in the office of the Secretary of State, and the date of recording shall be evidenced thereon. Until the license is recorded, the holder thereof shall not exercise any of the rights or privileges therein conferred, and in case such license is not recorded within sixty (60) days from the date of its issuance it shall become invalid. The Secretary of State shall be paid a fee of $1.00 for recording said certificate, and shall keep in a book to be provided by him for that purpose a complete list of certificates of license recorded by him, together with the date of each, and the date of recording. Any applicant failing to pass the examination prescribed by the Board shall be entitled to the refund of his, their or its fee accompanying the application. Any one failing to pass such examination may be re-examined at any regular meeting of the Board upon payment of regular fee.

All certificate of license to engage in the business of contracting in the State of Arkansas shall expire the last day of June following the issuance or renewal thereof, and shall become invalid on that day unless renewed. A fee of $50.00, payable at the time of filing the application, shall be assessed against each applicant and thereafter an annual renewal license fee to be determined by the Board but not to exceed $50.00 shall be paid by each licensee to defray the costs and expenses of the administration of this Act.

SECTION 9. That the Board, in determining the qualifications of any applicant for original license, or any renewal license, shall, among other things, consider the following: (a) experience, (b) ability, (c) character, (d) the

manner of performance of previous contracts, (e) financial condition, (f) equipment, (g) any other fact tending to show ability and willingness to conserve the public health and safety, and (h) default in complying with the provisions of this Act, or any other law of the State. A record shall be made and preserved by the Board of each examination of applicant or licensee, and the findings of the Board thereon, and a certified copy of the record shall be furnished to any applicant or licensee desiring to appeal from the findings of said Board, as hereinafter provided, upon payment of the costs of transcribing such record.

SECTION 10. That the Board shall have power to limit the license to that character of work for which the applicant is qualified.

SECTION 11. That the Board shall have the power to revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license or for gross negligence, incompetence or misconduct in the conduct of his, their, or its business. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any general contractor licensed hereunder. Such charge shall be in writing and sworn to by the complainant and mailed to the Board. Such charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board within thirty days after the date on which they were made. A time and place for such hearing shall be fixed by the Board and held in the City of Little Rock, County of Pulaski, and State of Arkansas. A copy of the charges, together with the notice of the time and place of hearing, shall be considered as legally served by the Board when sent to the last known address of the accused by registered mail, at least ten days before the fixed date for the hearing, and in the event that such service cannot be

effected ten days before such hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition. At said hearing the accused shall have the right to appear personally and by counsel, and to cross-examine witnesses against him, them or it, and to submit evidence in his, their or its behalf and defense. If after said hearing the Board finds the facts as alleged and of such character as to disqualify the licensee, then the Board shall revoke the license of the accused, but in such event no refund shall be made of the license fee. The Board may, within its discretion and upon proper application or hearing, reissue a license to any person, firm or corporation whose license has been revoked. The Board shall immediately notify the Secretary of State of its findings in the case of a revocation of a license, or of a reissuance of a revoked license. A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

SECTION 12. That the issuance of a certificate of license by this Board shall be evidence that the person, firm or corporation named therein is entitled to all of the rights and privileges of a licensed general contractor while the said license remains unrevoked or unexpired.

SECTION 13 [as amended by Act 217, Arkansas Acts 1945, Sec. 1 and Act 153, Arkansas Acts 1951, Sec. 4]. Any contractor who for a fixed price, commission, fee or wage, attempts to or submits a bid or bids to construct, or contracts to construct, or undertakes to construct, or assumes charge, in a supervisory capacity or otherwise, of the construction, erection, alteration or repair, of any building, highway, sewer, grading, or any other improvement or structure, when the cost of the work to be done by the contractor, including but not limited to labor and materials, is $20,000.00 or more, with-

out first having procured a license to engage in the business of contracting in this State, or who shall present or file the license certificate of another, or who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a certificate of license, or who shall impersonate another, or who shall use an expired or revoked certificate of license, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than $100.00 nor more than $200.00 for each offense, each day to constitute a separate offense. No action may be brought either at law or in equity to enforce any provision of any contract entered into in violation of this Act. The doing of any act or thing herein prohibited by any applicant or licensee shall in the discretion of the Board constitute sufficient grounds to refuse a license to an applicant or to revoke the license of a licensee.

SECTION 14. That in all prosecution for violations of the provisions of this Act for engaging in the business of general contracting without a certificate of authority, it shall be sufficient to allege in the indictment, affidavit or complaint that "A. unlawfully engaged in business as a general contractor, without authority from the State Licensing Board for General Contractors so to do."

SECTION 15. That the following shall be exempted from the provisions of this Act: The practice of general contracting as defined in Section 1 of this Act by an authorized representative or representatives of the United States Government, State of Arkansas, incorporated town, city or county, or other political subdivision in this State.

SECTION 16. That a corporation or partnership may engage in the business of general contracting; provided, at least one of the principals of such corporation or partnership is in re-

sponsible charge of such business and is licensed as herein required of general contractors.

SECTION 17. That when any contractor not being licensed by this Board in accordance with the provisions of this Act, shall engage, or attempt to engage, in the business of general contracting as herein defined, the Board shall have the right to go into the proper court in the jurisdiction in which the work is being performed, and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the said contractor from performance of the work then being done, or about to commence.

SECTION 18. That all architects and engineers preparing plans and specifications for work to be contracted in the State of Arkansas shall include in their invitation to bidders and in their specifications a copy of this Act, or such portions thereof, as are deemed necessary to convey to the invited bidder, whether he is a resident of this State, or not, the information that it will be necessary for him to have evidence of a license before his bid is considered.

SECTION 19. That any party aggrieved by any decision of the State Licensing Board for General Contractors shall have the right to seek review thereof by filing a petition within thirty (30) days from the finding made by said Board before any division of the Circuit Court of Pulaski County, Arkansas, in which said aggrieved party shall set out in what respect the adverse action of the Board complained of is erroneous and prejudicial, and shall request the court to review the record of the findings of said Board. Upon trial duly had, the record of the examination and hearing by the Board shall be reviewed by the Circuit Court, and at the conclusion thereof the court shall either uphold the action of the Board or shall direct the granting of the application for license denied, or the reinstatement of the license revoked, as the case may be from which an appeal may

be taken either by the applicant or by the Board to the Supreme Court as in other cases.

SECTION 20. That if any Section, sentence or provision of this Act shall be held unconstitutional, such holding shall not affect the remainder of the Act not in itself unconstitutional.

SECTION 21. That all laws or parts of laws in conflict herewith be, and the same are hereby, repealed.

SECTION 22. It is hereby determined and declared to be a fact that the practice of general contracting in the State of Arkansas is in need of regulation; that due to unethical practices, contractors within the State are being unduly penalized and are suffering irreparable injury, and this Act, being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage.

## APPENDIX B

1. The pertinent provisions of the Armed Forces Procurement Act of 1947, 62 Stat. 21, 41 U. S. C. 151, *et seq.* are as follows:

SEC. 2. * * *

(b) It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for supplies and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of $10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of section 2 (c) of this Act, suitable advance publicity, as determined by the agency head with due regard to the type of supplies involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section 3, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $1,000;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical supplies;

(8) for supplies purchased for authorized resale;

(9) for perishable subsistence supplies;

(10) for supplies or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test: *Provided,* That beginning six months after the effective date of this Act and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection (11) since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder;

(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture, as determined by the agency head,

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when he determines that advertising and competitive bidding may require duplication of investment or preparation already made, or will unduly delay procurement of such supplies;

(15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition: *Provided,* That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) the agency head determines that it is in the interest of the national defense that any plant, mine, or facility or any producer, manufacturer, or other supplier be made or kept available for furnishing supplies or services in the event of national emergency, or that the interest either of industrial mobilization in case of such an emergency, or of the national defense in maintaining active engineering, research and development, are otherwise subserved: *Provided,* That beginning six months after the effective date of this Act and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection (16) since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder; or

(17) otherwise authorized by law.

* * * * *

SEC. 3. Whenever advertising is required—

(a) The advertisement for bids shall be a sufficient time previous to the purchase or contract, and specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

(b) All bids shall be publicly opened at the time and place stated in the advertisement. Award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided,* That all bids may be rejected when the agency head determines that it is in the public interest so to do.

2. The pertinent provisions of the Armed Services Procurement Regulations, 32 C. F. R. 1.100 *et seq* (1954), are as follows:

§ 1.307 *Responsible prospective contractor.* Prior to the award of any contract for supplies or services the Contracting Officer shall determine that the prospective contractor is responsible. A responsible contractor is one which meets all of the requirements set forth in this section.

(a) Is a manufacturer, construction contractor, or regular dealer, if the contract or order calls for supplies (see § 1.201–9);

(b) Has adequate financial resources, or ability to secure such resources;

(c) Has the necessary experience, organization, and technical qualifications, and has or can acquire the necessary facilities (including probable subcontractor arrangements) to perform the proposed contract;

(d) Is able to comply with the required delivery or performance schedule (taking into

consideration all existing business commitments);

(e) Has a satisfactory record of performance, integrity, judgment, and skills; and

(f) Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

§ 1.307–1 *Pre-award survey.* (a) If the Contracting Officer finds that readily available information is not sufficient to enable him to determine that the prospective contractor meets all of the applicable requirements of § 1.307 he shall request a pre-award survey. A pre-award survey is a qualification check to determine that the prospective contractor is responsible. Preferably the survey should be made by technical and financial specialists in the appropriate fields, and may include an "on the spot" check of the facilities of the prospective contractor. Generally, a pre-award survey will not be necessary in determining that a prospective contractor is responsible when one or more of the following factors are applicable:

(1) The supplies required are off-the-shelf items to be obtained from a regular dealer or manufacturer.

(2) The prospective supplier has proved his reliability and capability by satisfactory performance of an existing or recent similar contract or contracts.

(3) The new purchase is an extension of a production or service currently being performed satisfactorily.

(4) The purchase is to be made from a Federal Supply Schedule.

(b) Normally, where the dollar amount of a procurement is not sufficient to justify the cost of a pre-award survey, Contracting Officers will not request such a survey. However, where a Contracting Officer has reason to believe that a prospective contractor may not be responsible, he may request a pre-award sur-

vey irrespective of the dollar amount of the procurement.

§ 1.307–2 *Experience data.* Departments are authorized to maintain such records and experience data as may be deemed desirable for the guidance of Contracting Officers in the placing of new procurements. In making use of such materials, Contracting Officers shall assure themselves that the information contained therein is current. The departments are encouraged to exchange and confer concerning such records and experience data to the extent that the information contained therein will be mutually useful.

* * * * *

§ 2.406–1 *Responsible bidder.* A "responsible bidder" is a bidder who satisfies the requirements of § 1.307 of this subchapter.

* * * * *

§ 2.406–3 *Other factors to be considered.* Among other factors besides price that may be considered in making an award are the following:

(a) Judgment, skill, and integrity of a bidder;

(b) Reputation and experience of a bidder, and prior work of a similar nature done by him;

(c) Foreseeable costs or delays to the Government resulting from differences in inspection, shipping, location of supplies, etc.;

(d) Changes made or requested in any of the provisions of the solicitation, to the extent that any such change does not constitute ground for rejection of the bid under the provisions of § 2.403;

(e) Restrictions or conditions imposed in the bid; and

(f) Advantages or disadvantages to the Government that might result from making multiple awards.

* * * * *

§ 3.101 *Negotiations as distinguished from formal advertising.* As used throughout this subchapter, negotiation means that method of procurement under which the procedures for procurement by formal advertising, as set forth in this part, are not required. Whenever supplies or services are to be procured by negotiation, price quotations, supported by statements and analyses of estimated costs or other evidence of reasonable prices and other vital matters deemed necessary by the Contracting Officer, shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the Contracting Officer to assure full and free competition consistent with the procurement of the required supplies or services, in accordance with the basic policies set forth in Subpart C of Part 1 of this subchapter, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Negotiation shall thereupon be conducted, by Contracting Officers and their negotiators, with due attention being given to the following and any other appropriate factors:

(a) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multishift and overtime costs, and any other factor relating to price, such as profits, cost of transportation, and cash discounts;

(b) Comparison of the business reputations, capabilities, and responsibilities of the respective persons or firms who submit quotations;

(c) Consideration of the quality of the supplies or services offered, or of the same or similar supplies or services previously furnished, with due regard to the satisfaction of technical requirements;

(d) Consideration of delivery requirements (see § 1.306 of this subchapter);

(e) Discriminating use of price and cost analyses;

(f) Investigation of price aspects of any important subcontract;

(g) Individual bargaining, by mail or by conference;

(h) Consideration of cost sharing;

(i) Effective utilization in general of the most desirable type of contract, and in particular of contract provisions relating to price redetermination;

(j) Consideration of the size of the business concern;

(k) Consideration as to whether the prospective supplier is a planned producer under the industrial mobilization program;

(l) Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities;

(m) Consideration as to whether the prospective supplier is located in a surplus or scarce labor area;

(n) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

(o) Consideration of the extent of subcontracting;

(p) Consideration of the existing and potential workload of the prospective supplier;

(q) Consideration of broadening the industrial base by the development of additional suppliers;

(r) Consideration of whether the contractor requires Government furnished property, machine tools, or facilities; or Government-operated test facilities; and

(s) Consideration of contract performance in facilities located in dispersed sites.

* * * * *

# APPENDIX C

## 1. RULES AND REGULATIONS OF THE CONTRACTORS LICENSING BOARD OF ARKANSAS, PROMULGATED PURSUANT TO ACT 124 OF 1939, AS AMENDED

1

Regular meetings of the Board shall be held in the office of the Board, Meers Building, Little Rock, Arkansas, at 10 a. m. on the first Monday of February and August. Special meetings of the Board may be held upon call of the Chairman or a majority of the Board. Each member of the Board shall be given notice of any special meeting at least 48 hours prior thereto.

2

Applications for licenses shall be filed on forms furnished by the Board and shall be supported by such data as the Board may determine is necessary to enable it to pass upon an applicant's qualifications.

3

Every financial statement required of an applicant shall bear the certificate of a certified public accountant.

4

An application for a license shall not be considered until the required fee shall have been paid.

5

A license issued upon the condition that additional data be furnished to the Board by the licensee on or

before a date set by the Board shall become null and void on such date without further action by the Board, in the event the required data is not filed with the Board.

These Rules and Regulations are published and filed as required by Act 183 of the Acts of Arkansas for 1953.

## 2. APPLICATION FOR LICENSE TO PRACTICE CONTRACTING IN ARKANSAS

Date_____, 19____

State of Arkansas,
Contractors Licensing Board
Little Rock, Arkansas.

Gentlemen:

I/We hereby apply for examination for registration and a certificate to practice the profession of Contracting in the State of Arkansas. I/We inclose herewith certified check for $50.00 (renewal—$25.00), payable to, Contractors Licensing Board, to cover fee.

1. Nationality_____ Color_____
2. If firm or corporation, give names of partners, or titles of officers_____
3. Have you been employed by any person or corporation for the discharge of duties pertaining to the practice of the profession of Contracting? If so, give the names and address of not more than three such persons or corporations, the time by each employed and the nature of such employment_____
4. State what branch of Contracting you desire to qualify under
5. Upon receipt of this application the Board will advise you of further requirements.
7. References:

One Architect or Engineer_____ (Name) (Address)

*Bank_____ (Name) (Street) (City) (State)

*One Material Supply Dealer_____ (Name) (Street) (City) (State)

One General Contractor_____ (Preferably one licensed under the law) (Name) (Street) (City) (State)

*PLEASE GIVE STREET ADDRESS ON REFERENCES

_____ (Name of Applicant)

By_____

_____ (Business Address)

_____ (Residence or Principal Office)

[Affidavits of truthfulness are on the reverse side; they are omitted in printing.]

# 2. APPLICATION FOR LICENSE TO PRACTICE CONTRACTING IN ARKANSAS

Date_____, 19____

State of Arkansas,
Contractors Licensing Board
Little Rock, Arkansas.

Gentlemen:

I/We hereby apply for examination for registration and a certificate to practice the profession of Contracting in the State of Arkansas. I/We inclose herewith certified check for $50.00 (renewal—$25.00), payable to, Contractors Licensing Board, to cover fee.

1. Nationality_____ Color_____
2. If firm or corporation, give names of partners, or titles of officers_____
3. Have you been employed by any person or corporation for the discharge of duties pertaining to the practice of the profession of Contracting? If so, give the names and address of not more than three such persons or corporations, the time by each employed and the nature of such employment_____
4. State what branch of Contracting you desire to qualify under
5. Upon receipt of this application the Board will advise you of further requirements.
7. References:

One Architect or Engineer_____
(Name) (Address)

•Bank_____
(Name) (Street) (City) (State)

•One Material Supply Dealer_____

2. If firm or corporation, give names of partners, or titles of officers_____
3. Have you been employed by any person or corporation for the discharge of duties pertaining to the practice of the profession of Contracting? If so, give the names and address of not more than three such persons or corporations, the time by each employed and the nature of such employment_____
4. State what branch of Contracting you desire to qualify under
5. Upon receipt of this application the Board will advise you of further requirements.
7. References:

One Architect or Engineer_____
(Name) (Address)

•Bank_____
(Name) (Street) (City) (State)

•One Material Supply Dealer_____
(Name) (Street) (City) (State)

One General Contractor_____
(Preferably one licensed under the law) (Name) (Street) (City) (State)

**•PLEASE GIVE STREET ADDRESS ON REFERENCES**

_____
(Name of Applicant)

By_____

(Business Address)

(Residence of Principal Officer)

# 4. CONTRACTOR'S STATEMENT OF EXPERIENCE AND FINANCIAL CONDITION SUBMITTED WITH APPLICATION FOR LICENSE

SUBMITTED BY _____ ☐ A Corporation ☐ A Co-partnership ☐ An Individual

PRINCIPAL OFFICE _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

1. How many years has your organization been in business as a contractor under your present business name? _____

2. How many years experience in _____ construction work has your organization had:

(a) As a General Contractor—Building? _____ Heavy? _____ (b) As a sub-contractor _____

3. Show the projects your organization has completed, in the following tabulation:

| YEAR | CLASS OF WORK | CONTRACT AMOUNT | LOCATION OF WORK AND FOR WHOM PERFORMED |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

### 3. AFFIDAVIT SUBMITTED WITH APPLICATION FOR LICENSE

STATE OF _____
Parish
County } ss:
of _____

_____, being duly sworn, deposes and says: That the applicant is not a party to any contract in the State of Arkansas for work in the amount of $20,000.00 or more, does not have outstanding a bid for work in the State of Arkansas in the amount of $20,000.00 or more, and will not bid on any work in the State of Arkansas in the amount of $20,000.00 or more until such time as this application is approved and a Contractor's License has been issued to the applicant.

_____

(To be signed by applicant if an individual, a partner if a partnership, or a responsible officer if a corporation.)

SWORN TO BEFORE ME THIS ____ DAY OF _____ 195__.

_____
Notary Public

My commission expires: _____

9. For what corporation or individuals have you performed work, and to whom do you refer?

9. For what cities have you performed work, and to whom do you refer?

10. For what parishes or counties have you performed work, and to whom do you refer?

11. For what State Bureaus or Departments have you performed work, and to whom do you refer?

12. Have you ever performed work for the U. S. Government? If so, when, and to whom do you refer?

11. For what State Bureaus or Departments have you performed work, and to whom do you refer?

12. Have you ever performed work for the U. S. Government? If so, when, and to whom do you refer?

13. Name the persons with whom you have been associated in business as partners or business associates in each of the last five years:

14. What is the construction experience of the principal individuals of your present organization?

| INDIVIDUAL'S NAME | PRESENT POSITION or OFFICE IN YOUR ORGANIZATION | YEARS OF CONSTRUCTION EXPERIENCE | MAGNITUDE AND TYPE OF WORK | IN WHAT CAPACITY |
|---|---|---|---|---|
| | | | | |
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| | | | | |

15. Have you filed performance record reports with the Bureau of Contract Information, Inc., Washington, D. C.?

# CONTRACTOR'S FINANCIAL STATEMENT

NAME YOUR BANKER_____

Condition at close of business_____ 19____

| | Dollars | Cts. |
|---|---|---|
| **ASSETS** | | |
| 1. Cash: (a) On hand $_____ (b) In bank $_____ (c) Elsewhere $_____ | | |
| 2. Notes Receivable: (a) Due within 90 days | | |
| (b) Due after 90 days | | |
| (c) Past due | | |
| 3. Accounts receivable from completed contracts, exclusive of claims not approved for payment | | |
| 4. Sums earned on incomplete contracts as shown by Engineer's or Architect's estimate | | |
| (a) Amount receivable after deducting amounts retained $_____ | | |
| (b) Amounts retained to date, due upon completion of contracts $_____ | | |
| 5. Accounts receivable from sources other than construction contracts | | |
| 6. Deposits for bids or other guarantees: (a) Recoverable within 90 days | | |
| (b) Recoverable after 90 days | | |
| 7. Interest accrued on loans, securities, etc. | | |
| 8. Stocks and Bonds: (a) Listed—book value | | |
| (b) Unlisted—book value | | |
| 9. Materials in stock not included in Item 4: (a) For incomplete contracts (inventory value) | | |
| (b) Other materials (inventory value) | | |
| Total Current Assets | | |
| **FIXED ASSETS** | | |
| 10. Real Estate: (a) Used for business purposes | | |
| (b) Not used for business purposes | | |
| 11. Construction Plant and Equipment, book value | | |
| 12. Furniture and Fixtures, book value | | |
| 13. Other Assets | | |
| Total Assets | | |

| | | |
|---|---|---|
| 7. Interest accrued on loans, securities, etc. | | |
| 8. Stocks and Bonds: (a) Listed—book value | | |
| (b) Unlisted—book value | | |
| 9. Materials in stock not included in Item 4: (a) For incomplete contracts (inventory value) | | |
| (b) Other materials (inventory value) | | |
| Total Current Assets | | |
| **FIXED ASSETS** | | |
| 10. Real Estate: (a) Used for business purposes | | |
| (b) Not used for business purposes | | |
| 11. Construction Plant and Equipment, book value | | |
| 12. Furniture and Fixtures, book value | | |
| 13. Other Assets | | |
| Total Assets | | |
| **LIABILITIES** | | |
| 1. Notes Payable: (a) To banks regular | | |
| (b) To banks for certified checks | | |
| (c) To others exclusive of equipment obligations | | |
| 2. Owing to Sub-Contractors, account of retained percentage and current estimates | | |
| 3. Accounts Payable: (a) Not past due | | |
| (b) Past due | | |
| Total Current Liabilities | | |
| 4. Encumbrances on equipment | | |
| 5. Real estate encumbrances | | |
| 6. Other liabilities | | |
| 7. Reserves | | |
| 8. Capital stock paid up: (a) Common | | |
| (b) Common | | |
| (c) Preferred | | |
| (d) Preferred | | |
| 9. Surplus (net worth) Earned $_____ Unearned $_____ | | |
| Total Liabilities | | |
| **CONTINGENT LIABILITIES** | | |
| 1. Liability on notes receivable, discounted or sold | | |
| 2. Liability on accounts receivable, pledged, assigned or sold | | |
| 3. Liability as bondsman | | |
| 4. Liability as guarantor on contracts or on accounts of others | | |
| 5. Other contingent liabilities | | |
| Total Contingent Liabilities | | |

## DETAILS RELATIVE TO ASSETS

**1*** Cash: (a) On hand $_____
(b) Deposited in banks named below $_____
(c) Elsewhere—(state where) $_____

| NAME OF BANK | LOCATION | DEPOSIT IN NAME OF | AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

**2*** Notes receivable: (a) Due within 90 days $_____
(b) Due after 90 days $_____
(c) Past due $_____

| RECEIVABLE FROM: NAME AND ADDRESS | FOR WHAT | Date of Maturity | HOW SECURED | AMOUNT |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Have any of the above been discounted or sold?_____ If so, state amount, to whom, and reason_____

**3*** Accounts receivable from completed contracts exclusive of claims not approved for payment . . . . . $_____

| | | | | |
|---|---|---|---|---|
| | | | | |
| | | | | |

Have any of the above been discounted or sold?_____ If so, state amount, to whom, and reason_____

**3*** Accounts receivable from completed contracts exclusive of claims not approved for payment . . . . . $_____

| NAME AND ADDRESS OF OWNER | NATURE OF CONTRACT | AMOUNT OF CONTRACT | AMOUNT RECEIVABLE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Have any of the above been assigned, sold or pledged?_____ If so, state amount, to whom, and reason_____

**4*** Sums earned on incomplete contracts, as shown by engineer's or architect's estimate:
(a) Amount receivable after deducting amounts retained $_____
(b) Amounts retained to date, due upon completion of contract $_____

| DESIGNATION OF CONTRACT AND FOR WHOM PERFORMED | AMOUNT OF CONTRACT | AMOUNT EARNED | AMOUNT RECEIVED | AMOUNT RETAINED | | AMOUNT EXCLUSIVE OF AMOUNT RETAINED |
|---|---|---|---|---|---|---|
| | | | | WHEN DUE | AMOUNT | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Have any of the above been assigned, sold, or pledged?_____ If so, state amount, to whom, and reason_____

*List separately each item amounting to 10 per cent or more of the total and combine the remainder

## DETAILS RELATIVE TO ASSETS (Continued)

**5*** Accounts receivable not from construction contracts $

| RECEIVABLE FROM: NAME AND ADDRESS | FOR WHAT | WHEN DUE | AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

What amount, if any, is past due $

Assigned, sold, or pledged $

**6** Deposits with bids or otherwise as guarantees $

| DEPOSITED WITH: NAME AND ADDRESS | FOR WHAT | WHEN RECOVERABLE | AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

What amount, if any, has been assigned, sold, or pledged $

**7** Interest accrued on loans, securities, etc. $

| ON WHAT ACCRUED | TO BE PAID WHEN | AMOUNT |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

What amount, if any, has been assigned, sold, or pledged $

**7** Interest accrued on loans, securities, etc. $

| ON WHAT ACCRUED | TO BE PAID WHEN | AMOUNT |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

What amount, if any, has been assigned, sold, or pledged $

**8** Stocks and Bonds: (a) Listed—book value $

(b) Unlisted—book value $

| | DESCRIPTION | ISSUING COMPANY | LAST INT. OR DIV. PAID: DATE | LAST INT. OR DIV. PAID: % | PAR VALUE | Present Market Value | QUANTITY | AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | | | | | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
| 4 | | | | | | | | |
| 5 | | | | | | | | |
| 6 | | | | | | | | |
| 7 | | | | | | | | |

| | WHO HAS POSSESSION | IF ANY ARE PLEDGED OR IN ESCROW, STATE FOR WHOM AND REASON | AMOUNT PLEDGED OR IN ESCROW |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |

*List separately each item amounting to 10 per cent or more of the total and combine the remainder

## DETAILS RELATIVE TO ASSETS (Continued)

**9** Materials in stock and not included in Item 4, Assets:

(a) For use on incomplete contracts (inventory value) ____ $ ____

(b) Other materials (inventory value) ____ $ ____

| DESCRIPTION OF MATERIAL | QUANTITY | PRESENT VALUE | |
|---|---|---|---|
| | | FOR UNCOMPLETED CONTRACTS | OTHER MATERIALS |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**10** Real estate Book value

(a) Used for business purposes ____ $ ____

(b) Not used for business purposes ____ $ ____

| | DESCRIPTION OF PROPERTY | IMPROVEMENTS | | TOTAL BOOK VALUE |
|---|---|---|---|---|
| | | NATURE OF IMPROVEMENTS | BOOK VALUE | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |

| | LOCATION | HELD IN WHOSE NAME | ASSESSED VALUE | AMOUNT OF ENCUMBRANCES |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

| | LOCATION | HELD IN WHOSE NAME | ASSESSED VALUE | AMOUNT OF ENCUMBRANCES |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |

**11** Construction equipment at book value ____ $ ____

(List separately all items of quarries, gravel pits, warehouses and similar plants which are not included under detail "9"—Real Estate)

| QUANTITY | DESCRIPTION, NAME AND CAPACITY OF ITEMS | AGE OF ITEMS | PURCHASE PRICE | DEPRECIATION CHARGED OFF | BOOK VALUE | Encumbrances |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
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Are there any liens against above? ____ If so, state total amount ____ $ ____

*If two or more items are lumped above, give the sum of their ages.

## DETAILS RELATIVE TO ASSETS (Continued)

**12** Furniture and fixtures at book value ____ $ ____

**13** Other assets ____ $ ____

| DESCRIPTION | AMOUNT |
|---|---|
| | |
| | |
| | |
| | |

TOTAL ASSETS $ ____

**14** Total value of other contracts awarded or pending award and not included in above statements ____ $ ____

| DESCRIPTION OF CONTRACT | FOR WHOM PERFORMED | DATE FOR COMPLETION | AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

TOTAL (not to be included in assets)

**15** List two of largest bonds supplied in each of last three years:

| COMPANY | AMOUNT |
|---|---|
| | |

**14** Total value of other contracts awarded or pending award and not included in above statements ____ $ ____

| DESCRIPTION OF CONTRACT | FOR WHOM PERFORMED | DATE FOR COMPLETION | AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

TOTAL (not to be included in assets)

**15** List two of largest bonds supplied in each of last three years:

| COMPANY | AMOUNT |
|---|---|
| | |

## DETAILS RELATIVE TO LIABILITIES

**1** Notes Payable:
- (a) To banks, regular ____ $ ____
- (b) To banks for certified checks ____
- (c) To others exclusive of equipment obligations ____

| TO WHOM: NAME AND ADDRESS | WHAT SECURITY | WHEN DUE | AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**2** Owing Sub-Contractors
- (a) Account of retained percentage ____ $ ____
- (b) Current estimates ____ $ ____

**3** **Accounts Payable:** (a) Not past due $_____

(b) Past due $_____

| TO WHOM: NAME, ADDRESS | FOR WHAT | DATE PAYABLE | AMOUNT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**4** **Encumbrances on equipment (see Item 11, Assets)** $_____

**5** **Real Estate encumbrances (see Item 10, Assets)** $_____

**6** **Other Liabilities** $_____

| DESCRIPTION | AMOUNT |
|---|---|
| | |
| | |
| | |
| | |
| | |

**7** **Reserves** $_____

| INTEREST | INSURANCE | BLDGS. & FIX. | PLANT DEPR. | TAXES | BAD DEBTS | MAINTENANCE | |
|---|---|---|---|---|---|---|---|
| $ | $ | $ | $ | $ | $ | $ | $ |

**8** **Capital Stock paid up:** (a) Common $_____

(b) Preferred $_____

| INTEREST | INSURANCE | BLDGS. & FIX. | PLANT DEPR. | TAXES | BAD DEBTS | MAINTENANCE | |
|---|---|---|---|---|---|---|---|
| $ | $ | $ | $ | $ | $ | $ | $ |

| | | | |
|---|---|---|---|
| 8 | Capital Stock paid up: | (a) Common | $ |
| | | (b) Preferred | |
| 9 | Surplus | | $ |

TOTAL LIABILITIES . . . $

If a corporation, answer this:

Capital paid in, cash, $

When incorporated

In what State

President's name

Vice-President's name

Secretary's name

Treasurer's name

If a co-partnership, answer this:

Date of organization

State whether partnership is general, limited, or association:

| Name and address of partners: | Age |
|---|---|
| | |
| | |
| | |
| | |

* * * * *

[Forms for affidavit of applicant and of certified public accountant omitted in printing.]

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